

Bail Slip

The Appellant/Accused viz. Samsudeen was directed to be released on Bail in and by the order of this Court dated 13.07.2001 made in CrI.M.P.No.3767 of 2001 in CrI.Appeal No.261 of 2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2005

Coram

The Honourable Mr.Justice N.DHINAKAR
and
The Honourable Mr.Justice M.CHOCKALINGAM

CrI.A.No.261 of 2001

Samsudeen ...Appellant (Accused)

-vs-

State by the
Inspector of Police
Avadi Police Station
Chengalpet MGR District
Chengalpet.
(Crime No.394/94)

...Respondent

Criminal Appeal to set aside the order and judgment passed in S.C.No.131/95 dated 26.2.1996 on the file of the Court of the Principal Sessions Judge, Chengalpattu.

For Appellants : Mr.B.Kumarasamy for
Mr.T.Muruganantham
For Respondent : Mr.M.K.Subramanian,
Government Advocate (CrI.Side)

JUDGMENT

[The Judgment of the Court was delivered by
M.CHOCKALINGAM, J]

The sole appellant who stood charged, tried and found guilty by the Court of Principal Sessions Judge, Chingleput and awarded life imprisonment for an offence under section 302 IPC and one year rigorous imprisonment for an offence under section 324 IPC, has brought forth this appeal.

2. The short facts that are necessary for the disposal of this appeal can be stated thus:-

(a) P.W.1 is the wife of the deceased. P.W.1 was living with her husband, Manokaran, the deceased, as a tenant in the house of P.W.9. P.W.9 is the elder sister of the accused. She was an illiterate and the deceased used to help her for writing letters. 40 days prior to the date of occurrence, the accused came and stayed with her sister. Just 20 days prior to the occurrence, he took all the jewels of the daughter of P.W.9 and all the letters written by her husband. P.W.9 was under the impression that the accused gone to his native place Kurumbur. She went over there and brought him back. From the time of his return, there was a continuous quarrel between the accused and his sister, P.W.9, as to the return of the jewels. On the previous day of the occurrence, i.e. on 17.2.1994, there was a heated exchange between P.W.9 and her brother, the accused. As usual, the deceased went over there and tried to pacify the situation. The deceased uttered "Not to quarrel with a lady, and if he was brave, he can face him." P.W.9 asked the accused to go out. The accused became enraged over the same. On 18.2.1994, P.W.1 came back from her work and at about 9.30 p.m. the deceased went to upstairs to take out dried clothes. P.W.1 also followed her husband. Both of them did not know the fact that the accused was present in the upstairs. There was again a quarrel. At that time, the deceased asked the accused to return the jewels to his sister and asked why he was quarreling with her. On hearing the same, the accused uttered a few words and the deceased caught the shirt of the accused. On being enraged over the same, the accused provoked, got down, took a knife, came back and stabbed the deceased. When P.W.1 interfered, she was also attacked. The accused gave two stabs on the chest and on the flank of the deceased, as a result of which, the deceased fell down. P.W.1 also sustained injuries. The accused immediately fled away from the place of occurrence. P.W.1 and the deceased were taken to a private nursing home called JJ Hospital, where, P.W.3 the Doctor, was present. At that time since it was a medico-legal case, the Doctor informed them to go to Kilpauk Medical College Hospital for further treatment. P.W.4, the Medical Officer, was present at Kilpauk Medical College Hospital and he treated P.W.1. Ex.P2 is the accident register in respect of P.W.1. He also examined the deceased and declared him dead. Ex.P3 is the death intimation, which was given to Avadi Police Station.

(b) P.W.16, Sub Inspector of Police, Avadi Police Station, on receipt of death intimation, reached Kilpauk Medical College Hospital, where he recorded the statement of P.W.1 under Ex.P1, on the strength of which, he registered a case in Crime No.394/1994 for the offences under sections 302 and 324 IPC. Ex.P24, the printed First Information Report, was despatched to the Court. On

receipt of the same, P.W.17, Inspector of Police, took up investigation, proceeded to the scene of occurrence, made an inspection in the presence of two witnesses and prepared an observation mahazar, Ex.P9 and a rough sketch, Ex.P25. Material Objects were also recovered from the scene of occurrence under a mahazar. He conducted inquest on the dead body of the deceased in the presence of witnesses and panchayathars and prepared Ex.P26, the inquest report. Following the same, the dead body of Manokaran, was sent to the Kilpauk Medical College Hospital, with a requisition Ex.P5 for conducting autopsy.

(c) P.W.5, the Professor and Head of the Department, Forensic Medicine, Kilpauk Medical College, Madras, on receipt of the requisition, conducted autopsy on the dead body of Manokaran and found the following injuries:-

1. Incised wounds on (a) back of left elbow 4 x 2 cm x skin deep.
(b) Over the back of left upper arm 4 x 2 cm x skin deep.
(c) On the middle of left thigh on the outer aspect 3 x 1.5 cm x skin deep.
2. An obliquely placed stab wound 3 x 2 cms on the front of left side of chest along the anterior axillary line and the upper end is 26 cms below the outer end of the left collar bone and the lower end is 14 cms away from the midline.

The Doctor has issued a postmortem certificate Ex.P6 and has opined that the deceased would appear to have died of shock and haemorrhage due to stab injury to the heart and left lung.

(d) During the course of investigation, the Investigating Officer arrested the accused on 1.3.1994 and he gave a confessional statement, which was recorded by him in the presence of two witnesses and the admissible part is marked as Ex.P28. Following the same, M.Os.22 and 23 were seized under a mahazar, Ex.P27. The accused was remanded to judicial custody. The statements of the accused and P.Ws.1, 2 and 9 and one Arul were recorded by the Court, on a requisition given by him, and the jewels belonging to P.W.9 were recovered pending investigation, from P.W.12 and they were also sent to Court. Following the same, a requisition was forwarded to the concerned Court for sending all the material objects for chemical analysis. Accordingly, they were subjected to chemical analysis and reports were received by the concerned Court. On completion of investigation, the Investigating Officer filed the final report before the Committal Court.

3. The case was committed to Court of Sessions. Necessary charges were framed against the appellant/ accused.

4. In order to substantiate the charges levelled against the accused, the prosecution examined 17 witnesses and relied on 29 exhibits and 23 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which he flatly denied as false. Neither a witness was examined nor a document was marked on the side of the defence.

5. After hearing the arguments advanced by both sides, and on scrutiny of the materials available on record, the trial Court found the accused guilty as per the charge and awarded punishment referred to above, which is the subject matter of challenge in this appeal, at the instance of the appellant/accused.

6. The learned counsel appearing for the appellant inter alia made the following submissions:-

(i) The only evidence that was available for the prosecution before the lower court was P.W.1. P.W.1 was none else than the wife of the deceased. Under the circumstances, the lower court should not have given much credence to her evidence as she is an interested witness. Apart from that, other parts of the evidence, in particular, medical evidence, did not support the case of the prosecution.

(ii) The learned counsel for the appellant would further submit that even assuming that the facts of the prosecution case are proved, the act of the accused would not fall within the ambit of murder. In the instant case, there is material to indicate that there was a quarrel even on 17.2.1994 and also on the occurrence day i.e., 18.2.1994, just prior to the occurrence between the accused and the deceased. It is also admitted by the witnesses in evidence that the deceased provoked him by catching his shirt and thus, he was entitled to benefit under the exception 1 to Sec.300 I.P.C., as it would only be a culpable homicide not amounting to murder. Hence, he should be given the said benefit, if the Court feels that the act of the accused is proved.

7. The Court heard the learned Government Advocate (Criminal Side) on the above contentions.

8. In the instant case, it is not in controversy that the husband of P.W.1, on being stabbed, was originally taken to JJ Hospital with injuries and on the advise of the Doctor, he was

taken to Kilpauk Medical College Hospital. The prosecution examined P.W.4, the Doctor, attached to the Kilpauk Medical College Hospital, who has given a copy of accident register in respect of P.W.1. Further he examined the deceased Manoharan, and declared him dead. Inquest was conducted by the Investigating Officer over the body of the deceased and following the same, the dead body was subjected to postmortem. P.W.6, the doctor, who conducted postmortem, has also been examined and she has issued Ex.P6, the postmortem certificate, wherein she has opined that the deceased would appear to have died of shock and hemorrhage due to stab injury to the heart and left lung. It was not disputed by the appellant either before the lower court or before this Court that the deceased died out of homicidal violence. Therefore, without any difficulty, whatsoever, it can be safely recorded that Mahoharan died out of homicidal violence.

9. In the instant case, in order to substantiate that it was the accused who stabbed the deceased at the place and time of the occurrence, and also caused injuries to P.W.1, the prosecution examined P.W.1. It is not in controversy that P.W.1 was living with her husband in the house of P.W.9 as a tenant, and the accused/appellant was the brother of P.W.9. It is no where disputed as to the presence of the accused/appellant at the time and on the date of occurrence, throughout the case. Immediately after the occurrence, P.W.1 and the deceased were taken to the hospital. P.W.4 the Doctor, issued a copy of accident register Ex.P2, the earliest document. In that document, the place and time of occurrence have been specifically mentioned. Following the same, a case has been registered by the respondent police. No circumstance or reason is brought forth before this court to suspect the testimony of P.W.1, who is also an injured witness. In the absence of the same, the lower court felt no difficulty in accepting the evidence of P.W.1. It is settled position of law that in any criminal case where even one single witness is available to speak about the occurrence and his evidence is trustworthy and inspiring the confidence of the Court, the Court can safely sustain the conviction. In the instant case, as P.W.1's evidence was not uncorroborated and it inspired the confidence of the Court, the lower court rightly accepted the same without any difficulty and this Court did not find any reason to take a different view from the one taken by the lower court. The medical evidence adduced through the doctor, who conducted postmortem and the postmortem certificate issued by her, stood in full corroboration with the ocular testimony. Thus there is ample evidence in the instant case to connect the accused with the crime, in which, he has killed the husband of P.W.1 and also caused injury to her.

10. Now coming to the question of nature of the act committed by the accused in the given situation, the Court has to necessarily agree with the submission made by the learned counsel for the appellant. In the instant case, P.W.1 has categorically admitted that even prior to the date of occurrence, there was a quarrel. She has also stated in her evidence that on the date of occurrence also at about 9.30 a.m, there was a quarrel, which arose due to return of jewels by the accused to his sister, and at that time, it was the deceased who caught the shirt of the accused and provoked by that, the accused got down from the upstairs, took a knife and stabbed him. When P.W.1 went to the rescue, she was also attacked. Thus, it can be well stated that the act of the accused is neither intentional nor a premeditated one; but, due to sudden provocation the accused committed the act at the time and place of occurrence. In such circumstances, the Court is of the considered opinion that the act of the accused would not fall within the ambit of murder, but it would be amounting to a culpable homicide not amounting murder. Thus it would attract Part of 304 IPC. The Court is of the view that sentence of seven years Rigorous Imprisonment would suffice to meet the ends of justice. The judgment of the lower court finding the accused guilty under section 302 IPC and the consequent sentence imposed upon him are set aside, and in that place, the appellant/accused is found guilty under section 304 (Part I) IPC and seven years of rigorous imprisonment is awarded for the same. In respect of conviction and sentence for the offence under section 324 IPC, the Court is unable to find any reason to deviate from the judgment of the lower court and it is sustained in that regard. The sentence imposed upon the appellant in respect of both the offences shall run concurrently.

11. With the above modification in conviction and sentence, the appeal fails and the same is dismissed. It is reported that the appellant is on bail. The learned Sessions Judge shall take steps to commit him to prison to undergo the remaining period of sentence imposed upon him.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Sessions Judge, Chingleput.
2. The Judicial Magistrate No.II, Poonamallee.
3. -do-through The Chief Judicial Magistrate, Chengalpet.
4. The District Collector, Chingleput.
5. The DGP, Chennai
6. The Public Prosecutor, Chennai.
7. The Superintendent of Police,
Central Prison, Cuddalore.
8. The Inspector of Police,
Avadi Police Station, Chengalpattu,
M.G.R District, Chengalpet.

AK(CO)
RVL 27.09.05

Crl.A.No.261 of 2001

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